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Maine State Panel of Mediators Annual Report, Fiscal Year 2011

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ANNUAL REPORT

PANEL OF MEDIATORS

Fiscal Year 2011

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (Supp. 2010).

The primary function of the Panel of Mediators is to assist bargaining agents, who represent public employees at all levels of government and education in Maine, and public employers to successfully negotiate initial or successor collective bargaining agreements. This process is called interest mediation and it entails a State mediator persuading the parties to alter their positions sufficiently to permit agreement. The Panel also has authority to engage in interest mediation pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. § 1953, et seq. (2005 and Supp. 2009), and to participate in helping resolve private sector collective bargaining disputes.

The number of new interest mediation requests received this fiscal year decreased from the total for the preceding year; there were 54 new requests compared with 64 in FY 2010 and 39 in FY 2009. During the last fifteen years, the number of new interest mediation filings per year ranged from the low of 39 in FY 2009 to a high of 74 filings in FY 1997. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 59 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 36 matters carried over from FY 2010 that required mediation activity during the year. Last year, 16 matters were carried over from FY 2009. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 90, up from 80 during the previous fiscal year.

The lower level of new mediation requests this year resulted from two major factors. As a consequence of the great recession, some parties' expectations have been adjusted to be

more closely consistent with the economic reality. Second, as noted in last year's report, a common strategy early on in the economic downturn was the agreement to one-year contract extensions in the hope that conditions would be more favorable a year later. Last year, faced with continued uncertainty in the national economy and scarce resources, parties returned to the practice of negotiating multi-year agreements to provide predictability in the terms and conditions of employment, resulting in fewer agreements expiring this year. The reduction in the number of mediation days per case this year reflects the changed attitudes in negotiations; the parties were either able to settle their differences or recognize that settlement would not be possible and moved the matter on to fact-finding within a shorter period of time.

Mediation is recorded as a single request, even when it involves multiple bargaining units of a single employer. For example, one filing this year was for 5 units; 3 units were involved in two other filings. In total, 99 bargaining units were involved in mediation this year.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%
2003	83.1%
2004	86.8%

2005	88.5%
2006	77.8%
2007	84.9%
2008	87.5%
2009	72.1%
2010	82.0%
2011	72.6%

Fiscal issues, particularly health insurance financing and general wage adjustments (or freezes), continued to be difficult issues to resolve this year. Predictably, job security provisions, including issues relating to sub-contracting and reductions in force, were at issue in several mediations. In the K-12 sector, the thorniest issues involved negotiations aimed at harmonizing the pay scales and other terms and conditions of employment for the new regional-school-unit-wide bargaining units, starting from the disparate provisions of the collective bargaining agreements that applied to the constituent school administrative units. During the past few years, the lack of funds to finance wage improvements has resulted in parties agreeing to a wide variety of changes in the terms and conditions of employment, further complicating the effort to reach uniform provisions for the new educational enterprises.

The Panel received a request for services this year pursuant to the Agricultural Marketing and Bargaining Law for a dispute between the Agricultural Bargaining Council and McCain Foods U.S.A., involving approximately one-half of the Maine potato crop. State Mediator David Bustin met with the parties for the 3 consecutive days of mandatory mediation. The mediation did not result in an agreement. Consistent with long-standing practice, the MLRB worked with the Department of Agriculture to supply the parties with a list of arbitrators, from which they selected the person who issued a decision in the case.

Several years ago, members of the Panel of Mediators received instruction by the U.S.

Department of Labor in interest-based bargaining techniques. Starting in FY 1996, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 64 instances where this problem-solving "preventive mediation" approach has been used, 62 settlements resulted (96.9% settlement rate). This year, we received two requests for preventive mediation services; both cases settled in two days of mediation.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. In calculating the settlement rate, only those matters where the mediator was actively involved in the settlement are considered as having been successful. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last 15 years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1997	74	12	60	2	0
1998	68	2	66	0	0

1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0
2002	54	3	50	0	1
2003	64	8	55	0	1
2004	65	2	63	0	0
2005	55	1	54	0	0
2006	58	4	53	0	1
2007	47	4	43	0	0
2008	40	2	38	0	0
2009	39	2	37	0	0
2010	64	3	60	0	1
2011	54	0	53	0	1

The requests for services received in the last three years involved the following employee organizations:

		<u>2011</u>	<u>2010</u>	<u>2009</u>
Maine Education Association/NEA ¹	23	28	13	
Teamsters Union Local 340	11	18	9	
AFSCME Council 93	8	9	6	
International Association of Fire Fighters	5	4	2	
Maine State Employees Association	3	11	5	
Maine Association of Police	2	2	3	
Amalgamated Transit Union	1	0	0	
International Association of Machinists		1	0	1

Overall, the demand for public sector mediation services decreased by 15.6% this year. While requests in the municipal sector, including counties and utility districts, remained relatively

¹While reference is made to the Maine Education Association, the Maine Association of Police or International Association of Fire Fighters for the sake of simplicity, the various activities described were undertaken by local associations which are affiliated with each of the larger state-wide or national employee organizations.

steady (3.2% reduction), those arising from K-12 education decreased 23.3%. Anecdotal evidence from the mediators indicates that several school employers and bargaining agents delayed beginning negotiations this year due to uncertainties regarding the amount each district would be receiving in the upcoming biennium from the State general purpose aid to education, resulting in fewer bargaining cases becoming ripe for mediation. The reduction in the number of bargaining units, due to the K-12 reorganization initiatives, may also have contributed to a decline in the number of mediation requests.

The average number of mediation-days per case declined from 4.09 in FY 2010 to 3.38 for the combined total of 62 matters, including carryovers, for which mediation was concluded. Two cases were concluded in 10 mediation days each while 2 others each required 9 days. Of the 62 cases in which mediation was concluded this year, 58% were resolved in 3 days or less (14 cases were resolved in one day, 13 were resolved in two days and 9 were resolved in three days).

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1997	3.76
1998	2.84
1999	3.46
2000	4.19
2001	3.89
2002	3.86
2003	3.46
2004	4.16
2005	3.89
2006	3.01

2007	5.42
2008	2.65
2009	2.74
2010	4.07
2011	3.38

Of the mediations, including carryovers, that were concluded in FY 2011, 12.9% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated in the following chart:

Fiscal Year	Percentage of Cases Proceeding to Fact Finding*
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%
2003	13.8% (38.5%)
2004	8.8% (19.11%)
2005	5.8 (25%)
2006	13.9% (20.8%)
2007	12% (26%)
2008	7.5% (17.5%)
2009	7.7% (16.3%)
2010	9.75% (21.9%)

2011	12.9% (19.4%)
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*Prior to FY 2003, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request has been filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is ever held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Assuming the average of 3.42 mediation-days per case, the 37 matters still pending will consume an additional 127 mediation-days, for a total expenditure of approximately 337 mediation-days devoted to matters docketed in or carried over to FY 2011.

Despite their good faith, parties can, and often do, disagree over the meaning and intent of collective bargaining agreement provisions they have negotiated. The resulting disputes are resolved through the contractual grievance procedure, which usually culminates in final, binding arbitration. In 2001, the Legislature amended 26 M.R.S.A. § 965(2)(F) to permit members of the Panel to assist parties in resolving grievance disputes, if the parties had so agreed. Parties are invariably more satisfied with results they have negotiated than with those imposed by a third party. One request for grievance mediation services was received this year, which was pending at the time this report was prepared. The use of grievance mediation is a positive development in public sector collective bargaining, helping parties to resolve grievances expeditiously and avoiding the expense and delay inherent in arbitration.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
David Bustin	Hallowell
Maria Fox	Portland
Jane Gilbert	Augusta
Robert L. Lyman	Freeport
James Mackie	South Portland

Sheila Mayberry
Charles A. Morrison
John M. Norris
Don Ziegenbein

Cape Elizabeth
Auburn
Carrabassett Valley
Bangor

Mediation continues to be the cornerstone of public sector collective bargaining in Maine. Practitioners in the labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.

Dated at Augusta, Maine, this 30th day of June 2011.

Respectfully submitted,

Marc P. Ayotte, Executive Director
Panel of Mediators and
Maine Labor Relations Board